

## ARTICLE 13-06

### DEFERRED PRESENTMENT SERVICE PROVIDERS

Chapter

13-06-01

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### DEFERRED PRESENTMENT SERVICE PROVIDERS

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#### **13-06-01-01. Definitions.** As used in this chapter:

1. "Annual percentage rate" means a measure of the cost of credit, expressed as a yearly rate, as calculated under the Truth in Lending Act [15 U.S.C. 1601].
2. "Date of the transaction" means the date on which the written agreement is signed and the funds are advanced.
3. "Deferred presentment service provider" means an entity often referred to as a payday loan, payday advance, or deferred deposit loan provider.
4. "Financial responsibility" means a financial condition, at a minimum, that is a positive net worth as disclosed in the most recent financial statement.
5. "Generally accepted accounting practices" means procedures adopted by the American institute of certified public accountants and federal accounting standards boards.

6. "Maturity date" means the date agreed upon by a licensee and check maker to present a check for final payment. "Maturity date" may also be referred to as date of negotiation, date of presentment, or presenting a check for payment.
7. "Principal shareholders" means any shareholders which control directly or indirectly the power to vote twenty-five percent or more of the voting shares of the corporation.
8. "Transaction" means a deferred presentment service transaction.
9. "Unencumbered assets" means any assets when a market value can be readily determined and which are not pledged or held under a security interest.

**History:** Effective July 1, 2001.

**General Authority:** NDCC 13-08-10

**Law Implemented:** NDCC 13-08-01

**13-06-01-02. Financial responsibility.** In order to determine financial responsibility, applicants shall provide with the application the most current fiscal year-end financial statements, prepared in accordance with generally accepted accounting principles. The applicant shall also include financial statements for the most recent quarter end.

**History:** Effective July 1, 2001.

**General Authority:** NDCC 13-08-10

**Law Implemented:** NDCC 13-08-03

**13-06-01-03. Determination of bond amount.** Each applicant shall maintain a bond issued by a surety company authorized to do business in this state. The bond amount is generally based on the high point of the receivables of the applicant's business, as of the most recent March thirty-first report. If an applicant has more than one licensed location, the bond amount is based on the combined receivables of all locations as of the most recent March thirty-first report. The initial bond amount is based on projected receivables.

A minimum of a twenty thousand dollar bond is based on receivables less than one hundred thousand dollars; a minimum of a fifty thousand dollar bond is based on receivables from one hundred thousand dollars to two hundred fifty thousand dollars; and a minimum of a seventy-five thousand dollar bond is based on receivables greater than two hundred fifty thousand dollars.

However, the commissioner may require a higher bond in the commissioner's sole discretion. The basis for determining the bond amount or any increases in the amount will be based, in part, on:

1. Financial responsibility of the licensee.

2. Issuance of any enforcement action against the licensee by this state or any other governmental entity.

**History:** Effective July 1, 2001.

**General Authority:** NDCC 13-08-10

**Law Implemented:** NDCC 13-08-03(4)

**13-06-01-04. Application.** A photograph of the exterior and interior of the business location must be included with the initial application. The application must include fingerprint cards from principal shareholders and managers. Any application received that is incomplete will be returned to the applicant and will not be considered for a license until the completed application is submitted in full.

**History:** Effective July 1, 2001.

**General Authority:** NDCC 13-08-04, 13-08-10

**Law Implemented:** NDCC 13-08-04(3), 13-08-06(1)

**13-06-01-05. Posting fees.** Licensees shall post a notice of fees in a conspicuous location in a minimum font size of forty-eight point.

**History:** Effective July 1, 2001.

**General Authority:** NDCC 13-08-10

**Law Implemented:** NDCC 13-08-06(1)

**13-06-01-06. Change of control.** The change of control application must be filed and approved by the commissioner prior to the date the change of ownership is consummated. The department shall act on the application within sixty days from the date the application is received but may extend the review period for good cause. The new applicant must meet the same criteria required of all deferred presentment service provider applicants, including payment of the investigation fee of four hundred dollars. At the commissioner's discretion, the commissioner may require a new license application.

**History:** Effective July 1, 2001.

**General Authority:** NDCC 13-08-07, 13-08-10

**Law Implemented:** NDCC 13-08-07

**13-06-01-07. Reports of commissioner.** Written reports in this section must be on a form prescribed by the commissioner. Written reports that are required by the commissioner to be filed within fifteen calendar days of the occurrence of the events are:

1. On or before April fifteenth of each year, the licensee shall file with the commissioner a financial report as of March thirty-first, relating to all transactions made by the licensees.
2. A report of the name change of the licensee must be filed with the department prior to the name change.

3. Whenever a licensee desires to change the licensed place of business, the licensee shall provide the department with the following prior to the relocation:
  - a. A written notice providing the complete address of the new location.
  - b. Photographs of both the exterior and interior of the new location.
  - c. A written sworn statement that the new location will not share the premises with that of another business.
  - d. A report of a change of management of the licensee.
  - e. The original license for reissue.

**History:** Effective July 1, 2001.

**General Authority:** NDCC 13-08-10

**Law Implemented:** NDCC 13-08-08(4)

**13-06-01-08. Regulations - Examinations.** For purposes of any investigation, examination, or proceeding under North Dakota Century Code chapter 13-08, the commissioner may require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the examination, investigation, or proceeding.

**History:** Effective July 1, 2001.

**General Authority:** NDCC 13-08-10

**Law Implemented:** NDCC 13-08-10

**13-06-01-09. Retention of records.** The records must be kept for six years from the date of the last transaction. Records must be located at the licensee's business location. With the commissioner's prior written approval, the licensee may retain records at a location other than the licensed location. The licensee shall make a written request to retain records at a location other than the licensed location which shall include the following:

1. The address of the offsite location.
2. A contact person and telephone number at the offsite location.
3. An acknowledgment that the licensee will pay for all examination expenses.

4. A statement that all books, records, and account information shall be made available within seventy-two hours after the department's request at either the licensed location or the offsite location.

**History:** Effective July 1, 2001.

**General Authority:** NDCC 13-08-10

**Law Implemented:** NDCC 13-08-11

**13-06-01-10. Required records.** Every licensee shall keep the following records:

1. **Transaction register.**
  - a. The transaction register must contain the original entry and be a permanent record, and must show for every transaction the account number, date of transaction, maturity date, date of rollover and new maturity date if any, amount of transaction, name of check maker and all other accountholders on that account, and the amount of fees expressed in dollar amount.
  - b. The transaction register must be kept numerically by transaction number in the order made and must have headings for each of the items required.
2. **An individual account record.** An individual account record must be kept for each check maker. Such account record must show the name and address of the check maker, co-makers, transaction number, date of transaction, maturity date, and fee expressed in dollar amount.
3. **File of all original papers.** A separate file shall be maintained for each check maker and shall contain the written agreement and acknowledged copy of the disclosure statement of transaction. Evidence of disclosure must be retained for six years from the date of the transaction. When prior written approval has been obtained from the commissioner, a licensee may maintain these files in any medium or format that accurately reproduces original documents or papers.
4. **Check copies.** Copies of checks received in the deferred presentment service transaction.
5. **Cash book.** All receipts and disbursements, of any amount whatsoever, must be entered in the cash book or equivalent record on the day they occur. Separate headings must be provided for payments and fees collected from check makers. The cash book must be a record of all details of income and disbursements, including all entries to individual accounts of check makers.
6. **Alphabetical record of check makers and co-makers.** The alphabetical record must show the account number and the name

of each check maker and co-maker who is currently indebted to the licensee, with sufficient information to locate the account record.

7. **Permanent file.** Each licensee shall maintain a permanent file which includes the following:
  - a. A copy of all correspondence sent to or received from the department within the past twenty-four months.
  - b. A copy of the last two examination reports and any related correspondence.
8. **Check record.** A record must be retained of each check presented for negotiation, including checks deposited, cashed, and checks presented directly to the check maker's issuing bank.
9. **Renewal record.** A record must be retained of all renewals as a separate record.
10. **Returned checks.** A record must be retained of all checks returned for nonsufficient funds, account closed, or stop payment.
11. **Rescinded transactions.** A record must be retained of all rescinded transactions by check maker as a separate record.

Erasures may not be made in the payment and charge sections of any account records. In case of error, a line must be drawn in ink through the improper entry and the correct entry made on the following line. The entries on the record must correspond with the receipts given the check maker.

Records of transactions made under North Dakota Century Code chapter 13-08 must be kept separate or readily identifiable from other types of business conducted in the office.

Electronic data processing, combination forms, and special office systems may be used if in accordance with generally accepted accounting practices and must contain the information required by this section.

**History:** Effective July 1, 2001.

**General Authority:** NDCC 13-08-10

**Law Implemented:** NDCC 13-08-11

#### **13-06-01-11. Procedures.**

1. Each document used in the transaction process bearing evidence of indebtedness, and executed by a check maker, must bear a transaction number.

2. The name and address of the licensee making the transaction must appear on all disclosure statements, all written agreements, and any other documents associated with the transaction.
3. At the time any transaction is made, the licensee shall give to the maker of the check a written disclosure statement. The written disclosure statement must be in a font size not less than ten point. The disclosure statement must be signed by the check maker.
4. The disclosure statement must contain the following items, which must be explained to and initialed by the check maker:
  - a. The schedule of fees charged;
  - b. No security held as condition of transaction or method of collection; and
  - c. Information required under federal law:
    - (1) Truth in Lending Act [15 U.S.C. 1601].
    - (2) Privacy notice under Federal Trade Commission Regulation - Privacy of Consumer Financial Information [16 CFR, part 313].
    - (3) Equal Credit Opportunity Act [15 U.S.C. 1691-1691f].
5. A licensee may not take any written agreement or other document related to the transaction in which the blanks are not filled in completely before the proceeds of the transaction are delivered. All spaces or sections not used in the preparation of legal documents must be ruled out or designated as "none" or "N/A".

**History:** Effective July 1, 2001.

**General Authority:** NDCC 13-08-10

**Law Implemented:** NDCC 13-08-12(1)

**13-06-01-12. Credit practices.** Any deferred presentment service provider that contracts with a third-party collection service in an attempt to collect nonsufficient funds, account closed, stop payment orders, or any other returned checks shall provide in the contract a notice of the twenty dollar maximum allowed returned check charge collected per year per check maker.

A licensee while collecting or attempting to collect an alleged debt may not engage in any of the following acts:

1. Using or threatening to use force, violence, or physical harm to a check maker or the check maker's family or property.

2. Threatening arrest or criminal prosecution when no basis for such action lawfully exists.
3. Threatening the seizure, attachment, and sale of a check maker's property when such action can only be taken pursuant to court order unless disclosure is made that prior court proceedings are required.
4. Disclosing or threatening to disclose information adversely affecting a check maker's reputation for creditworthiness with knowledge or reason to know such information is false.
5. Threatening to initiate or initiating communication with a check maker's employer.
6. Communicating or threatening to communicate with a check maker or the check maker's family with such unreasonable frequency as to constitute harassment or at times reasonably considered to be unusual hours or known to be inconvenient.
7. Using profane, obscene, or abusive language with a check maker or the check maker's family.
8. Disclosing or threatening to disclose information relating to a check maker's indebtedness to any other person except when such other person has a legitimate business need for the information.
9. Disclosing or threatening to disclose information concerning the existence of a debt, which the licensee knows to be reasonably disputed by the check maker, without disclosing the fact that the debt is disputed.
10. Attempting or threatening to attempt enforcement of a right or remedy with knowledge or reason to know that the right or remedy does not exist.
11. Using any form of communication simulating legal or judicial process which gives the appearance of being authorized, issued, or approved by a governmental agency or official or attorney at law when it is not.
12. Using badges, uniforms, or other indicia of any governmental agency or official except as authorized by law.
13. Misrepresenting the amount of the debt alleged to be owed.



14. Representing that an alleged debt may be increased by the addition of attorney's fees, investigation fees, or any other fees or charges when there is no contractual or statutory authorization for such addition.

**History:** Effective July 1, 2001.

**General Authority:** NDCC 13-08-10

**Law Implemented:** NDCC 13-08-12(7)

**13-06-01-13. General.**

1. The deferred presentment service check must be presented for payment within forty-six days of the original transaction date.
2. When a payment is made in cash, the licensee shall give a receipt to the check maker.
3. Unless otherwise authorized by subsection 14 of North Dakota Century Code section 13-08-12, no other business may be conducted at the licensed location unless authorized in writing by the commissioner. The commissioner's authorization will be predicated upon the licensee's agreement to the following:
  - a. That the authorization will not conceal nor facilitate concealment of an evasion of North Dakota Century Code chapter 13-06.
  - b. To comply with any applicable state or federal statutes and regulations.
  - c. To obtain any license or registration required by a federal, state, or local governmental agency to engage in the other business authorized.
  - d. That the commissioner may examine all records and investigate any or all transactions of the licensee.
  - e. That the commissioner retains the right, upon notice and opportunity to be heard, to alter, amend, or revoke another business authorization.
  - f. That if any federal or state statute or regulation enacted thereafter prohibits the activity, the authorization shall become null and void immediately.

**History:** Effective July 1, 2001.

**General Authority:** NDCC 13-08-10

**Law Implemented:** NDCC 13-08-12

**13-06-01-14. Written agreement.** At the time any transaction is made and funds are advanced, the licensee shall give to the maker of the check a signed written agreement. The written agreement must contain the following:

1. The name of the licensee.
2. The name and address of the check maker.
3. The date of the transaction.
4. The amount of the check.
5. The total amount of fees charged, expressed as a dollar amount and as an annual percentage rate.
6. The date of negotiation of the check.
7. The signature of the check maker.
8. A statement that a licensee may not renew a transaction more than once.
9. A statement that the renewal fee cannot exceed twenty percent of the amount being renewed.
10. The maximum term of the transaction, including the renewal, may not exceed forty-five days.
11. The term of the renewal period may not be less than fifteen days.
12. A renewal agreement must be contained in a separate section, as part of the original written agreement or in other form as approved by the commissioner. The renewal agreement must restate the transaction date, the amount of the check paid to the check maker, the fee charged in dollars and annual percentage rate, and maturity date.
13. A statement containing the right of rescission must be printed immediately above the signature line of the written agreement and must be in a minimum of ten-point font. A space must be provided for the check maker to initial that notice of the right of rescission was received.

**History:** Effective July 1, 2001.

**General Authority:** NDCC 13-08-10

**Law Implemented:** NDCC 13-08-12

**13-06-01-15. Surrender of license.** A licensee may surrender a deferred presentment service business license by delivering to the commissioner written notice that the license is surrendered. The surrender does not affect the licensee's

civil or criminal liability for acts committed prior to such surrender, affect the liability of the surety on the bond, or entitle such licensee to a return of any part of the annual license fee or fees. The commissioner may establish procedures for the disposition of the books, accounts, and records of the licensee and may require such action as the commissioner deems necessary for the protection of the maker of checks that are outstanding at the time of surrender of the license.

**History:** Effective July 1, 2001.

**General Authority:** NDCC 13-08-10

**Law Implemented:** NDCC 13-08-10

**13-06-01-16. Advertising.** A licensee may not advertise in a false, misleading, or deceptive manner or imply or indicate that the rates or charges for loans made are "approved", "set", or "established" by the department of financial institutions.

**History:** Effective July 1, 2001; partially voided effective April 17, 2002.

**General Authority:** NDCC 13-08-10

**Law Implemented:** NDCC 13-08-10

**13-06-01-17. Enforcement.** The commissioner may publish information concerning any violation of the statute or any rule, regulation, or order of the commissioner under the statute.

The department or department agents may confiscate control of any record for purposes of verification of bond claims.

**History:** Effective July 1, 2001.

**General Authority:** NDCC 13-08-10

**Law Implemented:** NDCC 13-08-10